

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Liliana Manuel	Team: Squad #7	CCRB Case #: 201604449	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 04/16/2016 4:30 AM	Location of Incident: East 42nd Street and Snyder Avenue	Precinct: 67	18 Mo. SOL 10/16/2017	EO SOL 10/16/2017	
Date/Time CV Reported Mon, 05/23/2016 10:56 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 05/23/2016 10:56 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Drewe Cupid	20419	958455	067 PCT
2. POM Vito Polisenio	18478	951070	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Adam Gierlachowski	19124	958629	067 PCT
2. POM Alexander Kreamer	29445	950705	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Drewe Cupid	Force: Police Officer Drewe Cupid pointed his gun at § 87(2)(b)	
B.POM Vito Polisenio	Force: Police Officer Vito Polisenio pointed his gun at § 87(2)(b)	
C.POM Vito Polisenio	Discourtesy: Police Officer Vito Polisenio acted discourteously toward § 87(2)(b)	
D.POM Vito Polisenio	Abuse: Police Officer Vito Polisenio frisked § 87(2)(b)	
E.POM Vito Polisenio	Abuse: Police Officer Vito Polisenio searched § 87(2)(b)	
F.POM Vito Polisenio	Force: Police Officer Vito Polisenio used physical force against § 87(2)(b)	
G.POM Vito Polisenio	Discourtesy: Police Officer Vito Polisenio spoke discourteously to § 87(2)(b)	
H.POM Vito Polisenio	Abuse: Police Officer Vito Polisenio threatened to arrest § 87(2)(b)	
I.POM Vito Polisenio	Abuse: Police Officer Vito Polisenio searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On May 23, 2016, § 87(2)(b) filed the following complaint via the CCRB online website (Board Review 01). On April 16, 2016, at approximately 4:30 a.m., § 87(2)(b) was pulled over by PO Vito Polisenio and PO Drewe Cupid of the 67th Precinct on Snyder Avenue and East 42nd Street in Brooklyn. PO Polisenio and PO Cupid approached § 87(2)(b)'s car with their guns pointed at him, and PO Polisenio allegedly punched § 87(2)(b)'s car window (**Allegations A, B, and C**). Upon exiting his car, § 87(2)(b) was allegedly frisked and searched by PO Polisenio (**Allegations D and E**). PO Polisenio then pushed § 87(2)(b) and told him, "Don't fucking spit in my face" (**Allegations F and G**). PO Polisenio asked § 87(2)(b) "You want to get in cuffs right now? Is that what you fucking want?.. Fucking relax" (**within Allegation G, Allegation H**). Additional officers responded to administer a portable breathalyzer test, which confirmed that § 87(2)(b) was intoxicated. After placing § 87(2)(b) under arrest for § 87(2)(b), PO Polisenio allegedly searched § 87(2)(b)'s car (**Allegation I**) (Board Review 02). § 87(2)(b)'s neighbor, § 87(2)(b) filmed a portion of the incident. She provided the video to § 87(2)(b) who then forwarded to the CCRB. The footage shows PO Polisenio pushing § 87(2)(b) making discourteous statements to him, and threatening to arrest him. It also shows PO Polisenio entering § 87(2)(b)'s car. The full video can be viewed in IA #24 (Board Review 03; 18). Relevant portions of the video are embedded below (Board Review 21).

§ 87(2)(g)



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Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- As of June 10, 2016, § 87(2)(b) had not filed a Notice of Claim with the City of New York with regard to this incident (Board Review 04).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 06).
- PO Polisenio has been a member of the NYPD for five years. He has had two prior CCRB cases involving two allegations, none of which were substantiated. One of his past allegations was a force allegation (nonlethal restraining device). The allegation was administratively closed.
- This is the first CCRB complaint filed against PO Cupid in his one-year tenure.

Potential Issues

§ 87(2)(b) provided an unsworn phone statement to the CCRB on June 8, 2016, and scheduled a CCRB interview to take place on June 14, 2016 (Board Review 19). § 87(2)(b) did not appear to her appointment. She scheduled a second interview to take place on June 28, 2016, but did not appear to that interview either. § 87(2)(g)

On June 13, 2016, contact was established with § 87(2)(b)'s husband, § 87(2)(b) who witnessed a brief portion of the incident (Board Review 20). § 87(2)(b) provided an unsworn phone statement but did not witness any FADO allegations. § 87(2)(g)

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) did not allege that PO Cupid pointed his gun at him; however, PO Cupid confirmed that he pointed his gun at § 87(2)(b) § 87(2)(g)

In his sworn statement, § 87(2)(b) initially alleged that both PO Polisenno and PO Cupid frisked and searched him, but then stated that only PO Cupid frisked and searched him, and that he did so prior to placing § 87(2)(b) under arrest. PO Cupid and PO Polisenno acknowledged that § 87(2)(b) was frisked and searched incident to a lawful arrest, but that PO Polisenno also frisked § 87(2)(b) immediately after taking him out of his car, prior to his arrest. § 87(2)(g)

Allegations Not Pleaded

- **Vehicle Stop** – PO Polisenno and PO Cupid stated that they conducted the vehicle stop because they observed § 87(2)(b) drive through a steady red light. § 87(2)(b) acknowledged in his CCRB interview that he may have run the red light. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Allegation A – Force: Police Officer Vito Polisenno pointed his gun at § 87(2)(b)

Allegation B – Force: Police Officer Drewe Cupid pointed his gun at § 87(2)(b)

Allegation C – Discourtesy: Police Officer Vito Polisenno acted discourteously toward § 87(2)(b)

It is undisputed that PO Polisenno and PO Cupid pointed their guns at § 87(2)(b) while approaching his car.

In addition to his on-line complaint, § 87(2)(b) provided an unsworn phone statement to the CCRB on May 24, 2016, and a sworn statement to the CCRB on June 1, 2016 (Board Review 16; 17). His statements were generally consistent. § 87(2)(b) turned from Snyder Avenue onto East 42nd Street, and acknowledged that the light at the intersection may have turned red as he made his turn. He pulled into a parking space just passed the intersection, by his home. While adjusting his car in the parking space, an RMP pulled up next to him and put its lights on. § 87(2)(b) had not seen the RMP prior to that point. PO Polisenno stood by the RMP, pointing his gun at § 87(2)(b) and told § 87(2)(b) to get out of the car. § 87(2)(b)'s window was closed, his car was still in drive, and his seatbelt was still on, but he feared that if he moved his hands to put the car in park, PO Polisenno may shoot him. § 87(2)(b) therefore held his foot on the brake and put his hands in the air. With his gun still pointed, PO Polisenno walked to § 87(2)(b)'s window, and with his free hand, punched the window while telling § 87(2)(b) to open or unlock the car door. PO Polisenno opened the door and removed § 87(2)(b) from the vehicle. PO Polisenno repeatedly accused § 87(2)(b) of attempting to run him over or hit his RMP. § 87(2)(b) denied attempting to do so.

In her unsworn phone statement, § 87(2)(b) stated that she looked out of her window and saw an officer, identified via the investigation as PO Polisenno, standing at § 87(2)(b)'s window with his gun pointed at § 87(2)(b) § 87(2)(b)'s car was parked across the street from her home, and his driver window faced § 87(2)(b) § 87(2)(b) did not allege that PO Polisenno punched § 87(2)(b)'s window. She recounted PO Polisenno later accusing § 87(2)(b) of having attempted to run him over or hit his RMP. § 87(2)(b) denied having done so.

PO Polisenno and PO Cupid were interviewed at the CCRB on July 28, 2016 (Board Review 22; 24). Their statements were generally consistent. Both officers stated after observing § 87(2)(b) drive through

§ 87(2)(g)

§ 87(2)(b) was consistent throughout his various statements that PO Polisenio punched his window while telling him to either open or unlock his door for the second time. § 87(2)(g)

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§ 87(2)(g)

Allegation D – Abuse of Authority: Police Officer Vito Polisenio frisked § 87(2)(b)

Allegation E – Abuse of Authority: Police Officer Vito Polisenio searched § 87(2)(b)

§ 87(2)(b) stated that when PO Polisenio opened his car door, PO Polisenio tried to pull him out of the car, but did not tell him to get out of the car. Upon realizing § 87(2)(b)'s seatbelt was on and his car was in drive, PO Polisenio put the car in park, unbuckled § 87(2)(b)'s seatbelt, and pulled him out of the car. § 87(2)(b) was escorted to the back of his car, where an officer, identified as PO Polisenio, patted him down and put his hands into his pockets. § 87(2)(b) believed his phone was in his front right pocket, his keys were in his front left pocket, and his wallet was in his back right pocket. These objects did not create any bulges.

§ 87(2)(b) did not see any officer frisk or search § 87(2)(b). She did not begin recording the incident until after the alleged frisk and search would have occurred.

PO Polisenio stated that he put § 87(2)(b)'s car in park, took off his seatbelt, and pulled him out of the car. When further questioned about the pull, PO Polisenio stated he had asked § 87(2)(b) to step out of his car approximately three times prior to pulling him out, and that § 87(2)(b) did not comply at any point. Immediately upon arriving at the back of § 87(2)(b)'s car, PO Polisenio patted § 87(2)(b)

§ 87(2)(b) down for weapons. PO Polisenio recounted observing a bulge in one of § 87(2)(b)'s pockets from his wallet, but stated that the only factor that led him to believe § 87(2)(b) may have had a weapon was the fact that § 87(2)(b) did not want to exit his car. Once § 87(2)(b) exited his car, there were no additional factors that led PO Polisenio to fear for his safety. PO Polisenio first stated that § 87(2)(b) was not considered to be under arrest until he blew above the legal limit on the breathalyzer, which was some time after he was frisked. PO Polisenio then stated that at the point in which § 87(2)(b) was frisked, the officers were planning to take some sort of police action, whether it be issuing him a summons or arresting him for reckless endangerment. PO Polisenio denied that § 87(2)(b) was ever searched prior to him being placed under arrest.

PO Cupid stated that he and PO Polisenio repeatedly told § 87(2)(b) to take his hands off of the steering wheel and put his car in park, but that § 87(2)(b) refused. PO Polisenio put § 87(2)(b)'s car in park, took off his seatbelt, and told him to get out of the car, but § 87(2)(b) refused and kept his hands on the steering wheel. PO Polisenio frisked § 87(2)(b) once § 87(2)(b) exited his car. PO Cupid stated that there was "not necessarily" any indication that § 87(2)(b) was in possession of a weapon, but that he was perceived to be a threat because he had refused the officers' instructions to take his hands off of the steering wheel and get out of his car, he had attempted to hit PO Cupid with his car, and because he smelled of alcohol. PO Cupid stated that § 87(2)(b) was not deemed under arrest until he failed the breathalyzer test. PO Cupid denied that he or PO Polisenio searched § 87(2)(b) prior to placing him under arrest.

PO Gierlachowski denied seeing any officer frisk § 87(2)(b) and could not recall if he saw an officer search § 87(2)(b).

In order to perform a frisk, an officer must have reasonable suspicion that a person is armed and dangerous, Arizona v. Johnson, 555 U.S. 323 (2009) (Board Review 09). Such suspicions should be supported by observations or factors, such as a noticeable bulge, or presence in an area with frequent shootings, that contribute to such a particularized suspicion. People v. Isaac, 107 A.D.3d 1055 (2013) (Board Review 10). Once a person is removed from a vehicle, an individual's previous motions inside the vehicle do not justify a frisk as there is no immediate threat to the officers' safety, People v. Chann, 221 A.D.2d 155 (1995) (Board Review 11). The mere existence of probable cause to arrest an individual does not provide justification for an officer to frisk or search the individual unless the officer has actually placed or is in the process of placing the suspect under arrest. People v. Reid, 2014 NY Slip Op 08759 (2014) (Board Review 25).

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Allegation F – Force: Police Officer Vito Polisenno used physical force against § 87(2)(b)

Allegation G – Discourtesy: Police Officer Vito Polisenno spoke discourteously to § 87(2)(b)

Allegation H – Abuse of Authority: Police Officer Vito Polisenno threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that PO Polisenno repeatedly accused § 87(2)(b) of having attempted to hit him with his car. While § 87(2)(b) PO Polisenno, PO Cupid, and the backup officers were standing behind § 87(2)(b)'s car, PO Polisenno again made this accusation, at which point § 87(2)(b) raised his voice and stated, "It's obvious I wasn't trying to fucking run you over," or, "It's obvious I was trying to fucking park my car." PO Polisenno then advanced towards § 87(2)(b) standing less than two feet from him, and with both hands, shoved § 87(2)(b)'s chest, causing § 87(2)(b) to fall back against his car. § 87(2)(b) did not sustain any injuries as a result. PO Polisenno then told § 87(2)(b) "Fucking relax," and accused § 87(2)(b) of spitting on his face. § 87(2)(b) denied spitting at PO Polisenno and stated that he maintained a relaxed body stance, leaning against his car with his arms crossed for most of the incident.

§ 87(2)(b) filmed the video footage from across the street, and so not all of the conversation between § 87(2)(b) and the officers can be heard. § 87(2)(b) is depicted leaning against the back of his car in a relaxed stance for the majority of the footage. At the 4:25 mark in the full video (IA #24), § 87(2)(b) raises his voice and asks PO Polisenno, "Why do you keep saying that?" PO Polisenno states something unintelligible. He walks closer to § 87(2)(b) leaning his head and shoulders towards § 87(2)(b) so that their faces are within inches from each other. § 87(2)(b) states, "I'm trying to fucking park," and gestures with his hands, pointing in the direction of his car. PO Polisenno shoves § 87(2)(b)'s chest with both hands, and states, "Don't fucking spit in my face." The push causes § 87(2)(b)'s shoulders to move back. § 87(2)(b) then states, "I never got locked up," and PO Polisenno responds, "You're about to." § 87(2)(b) replies, "Are you? Come on..." PO Polisenno interjects, asking, "You wanna get in cuffs right now? Is that what you fucking want? No problem. So fucking relax... Fucking relax." A few minutes later, § 87(2)(b) is issued a breathalyzer and is then handcuffed. He is handcuffed four minutes after having been pushed.

PO Polisenno stated that § 87(2)(b) was irate, and was screaming and cursing at the officers for the duration of the incident. He described § 87(2)(b) as being "very uncooperative" by repeatedly "leaning" and trying to put his hands in his pockets. Prior to reviewing the footage, PO Polisenno did not recall using profanity or pushing § 87(2)(b) and described his own demeanor as calm. He denied telling § 87(2)(b) "You're about to," in response to § 87(2)(b) allegedly stating he had never been arrested, and denied asking § 87(2)(b) if he wanted to "get in cuffs right now."

An abridged version of video footage was presented to PO Polisenno at the conclusion of his interview (IA #66). PO Polisenno then confirmed that he pushed § 87(2)(b) told him to "fucking relax," and made the threats of arrest. He stated that the video clearly showed § 87(2)(b) being "irate and uncooperative." He explained that he pushed § 87(2)(b) because he did not know what § 87(2)(b) was doing with his right arm, and believed § 87(2)(b) may have put his hand on PO Polisenno's arm. PO Polisenno added that § 87(2)(b) was, "coming off the car, leaning off, pushing off, being very aggressive." PO Polisenno stated that § 87(2)(b) spat *while* speaking, rather than as a separate action, but that he believed the

spitting was intentional. PO Polisenio could not recall what § 87(2)(b) was referring to when he stated, “Why do you keep saying that?” He was not sure if § 87(2)(b) had already been administered the breathalyzer when PO Polisenio told § 87(2)(b) “You’re about to,” in response to § 87(2)(b) stating he had never been arrested. PO Polisenio stated however, that at the point in which he made that statement, § 87(2)(b) was “more than likely” going to be arrested for reckless endangerment.

PO Cupid stated that § 87(2)(b) repeatedly yelled and cursed at the officers throughout the incident. Prior to reviewing the footage, he did not recall hearing PO Polisenio tell § 87(2)(b) to “fucking relax,” and denied seeing PO Polisenio push § 87(2)(b). He did not recall hearing PO Polisenio make the alleged threats of arrest, and stated that § 87(2)(b) was not deemed under arrest until he was administered the breathalyzer. Upon reviewing the video footage, PO Cupid could offer no explanation as to why PO Polisenio pushed § 87(2)(b). PO Cupid stated that saliva came out of § 87(2)(b)’s mouth as he spoke, simply from the way he was talking, but PO Cupid did not see § 87(2)(b) intentionally spit on an officer at any point.

PO Gierlachowski recounted § 87(2)(b) making insulting statements to the officers. He did not recall officers issuing § 87(2)(b) commands at any point other than when an officer told him how to use the breathalyzer. PO Gierlachowski did not see § 87(2)(b) spit on PO Polisenio.

An officer may use force to reasonably ensure the safety of a member of the service or a third person, to take a lawfully arrested person into custody, or to prevent one’s escape from custody. NYPD Patrol Guide, Procedure 221-01 (Board Review 12). Officers are to be courteous and respectful to civilians. NYPD Patrol Guide, Procedure 203-09 (Board Review 08). In stressful encounters, an officer may use limited profanity where the need to gain compliance or maintain control of an incident is present, NYPD v. Court, OATH Index 78667/03 (Board Review 13). A person is guilty of disorderly conduct when, with intent to cause public annoyance or alarm, they make unreasonable noise or use abusive or obscene language in a public place. NY Penal Law, Section 240.20 (2-3) (Board Review 14).

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[REDACTED]

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[REDACTED]

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It is undisputed that PO Polisenio asked § 87(2)(b) “You wanna get in cuffs right now? [sic]... so fucking relax” and, “You’re about to,” in response to § 87(2)(b) stating he had never been arrested.

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Allegation I – Abuse of Authority: Police Officer Vito Polisenio searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that after he was placed under arrest for § 87(2)(b), PO Polisenio went into § 87(2)(b)’s car through the driver door and retrieved § 87(2)(b)’s insurance information from the glove compartment. PO Polisenio had not asked § 87(2)(b) for permission to enter his car. § 87(2)(b) was still behind his car when PO Polisenio entered the car, and he therefore could not see where in the car PO Polisenio looked. He believed however, that PO Polisenio searched through the whole interior of the car, and that PO Polisenio finished parking the car. § 87(2)(b)’s car was not vouchered.

The video footage shows PO Polisenio enter § 87(2)(b)’s car and sit in the driver’s seat while making a phone call. PO Polisenio is seen leaning and reaching toward the passenger side of the car, and leaning down to his right. The footage does not show what PO Polisenio reached for, whether he opened the glove compartment, or whether he removed any documents or items from the areas in which he reached and leaned. The footage shows PO Polisenio then moving the car. § 87(2)(b) is seen standing behind his car in handcuffs, with his back facing his car while PO Polisenio is in the car. PO Cupid is depicted standing a few feet to the right of § 87(2)(b) on the driver’s side of the car but towards the back of the car. PO Cupid briefly looks at PO Polisenio while PO Polisenio is in § 87(2)(b)’s car, but PO Cupid focuses his attention on § 87(2)(b) for the most part.

PO Polisenio stated that after § 87(2)(b) was placed under arrest, PO Polisenio entered § 87(2)(b)’s car and searched the lungable areas, which he described as the floor of the car by the driver and front passenger seat. He performed the search for weapons and any evidence of alcohol. He denied searching any part of the back seat or the glove compartment, even after reviewing the video footage. PO Polisenio then parked § 87(2)(b)’s car.

PO Cupid stated that he was standing near the front driver’s door of § 87(2)(b)’s car with § 87(2)(b) when PO Polisenio searched the car, and he therefore could see where PO Polisenio looked. He stated that PO Polisenio searched the floor of the car near the driver, passenger, and back seats. He did not see PO Polisenio look in the glove compartment or any other compartments. PO Gierlachowski could not recall if he saw PO Polisenio enter § 87(2)(b)’s car.

Officers may perform a search of the lungable area of a vehicle incident to lawful arrest of a passenger inside the vehicle if the vehicle may contain evidence related to the crime. People v. Gant, 556 U.S. 332 (2009) (Board Review 15).

§ 87(2)(g)

Squad: 07

Investigator: _____ Liliana Manuel _____
Signature Print Date

Squad Leader: _____ Diana Murray _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date